

Attorney Docket No.: RTS-0335
Inventors: Kenneth W. Dobie
Serial No.: 10/006,972
Filing Date: December 4, 2001
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REMARKS

Claims 1 - 20 are pending in the instant application. Claim 3 has been canceled. No new matter has been added. Reconsideration is respectfully requested.

The pending claims have been subjected to a Restriction Requirement as follows:

Group I, claims 1-14, and 19-20, drawn to a compound 8 to 50 nucleobases in length targeted to a nucleic acid molecule encoding phospholipid scramblase 3, classified in class 536, subclass 24.5; and

Group II, claims 15-18, drawn to a method of inhibiting the expression of phospholipid scramblase 3 in cells or tissues comprising contacting said cells or tissues with a compound of 8 to 50 nucleobases in length targeted to a nucleic acid encoding phospholipase scramblase 3 and methods of treating an animal having a disease.

The Examiner suggests that Groups I and II as set forth above are distinct, each from the other, because they are related as product and process of use.

It is further suggested that claims 1-20 are generic to a plurality of disclosed patentably distinct antisense oligonucleotides comprising a nucleotide sequence according to

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SEQ ID NO: 20, 21, 28-29, 39, 41-42, 47, 51, 56, 58-59, 63 and 77-79. Each of the antisense oligonucleotide recited in the instant claims are considered to be structurally independent and distinct even though they each target the same gene because each of these antisense oligonucleotide sequences have unique nucleotide sequence and each targets a different and specific region of the gene.

Applicant respectfully traverses this restriction requirement.

MPEP §803 is quite clear; for a proper restriction requirement, it must be shown (1) that the inventions are independent or distinct AND (2) that there would be a serious burden on the Examiner if the restriction is not required. MPEP 802.01 defines "distinct" to mean that the "two or more subjects as disclosed are related, for example, as combination and part (subcombination) thereof, process and apparatus for its practice, process and product made there, etc., but are capable of separate manufacture, use, or sale, as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER."

All of claims of the instant application relate to the single concept of a compound 8 to 50 nucleobases in length targeted to a nucleic acid molecule encoding phospholipase

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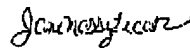
scramblase 3. Accordingly, each of the claims contain the same components, namely a compound 8 to 50 nucleobases in length targeted to a nucleic acid molecule encoding phospholipid scramblase 3. Thus, Applicant respectfully disagrees that the Groups set forth by the Examiner are distinct as being novel and unobvious over each other, as required by MPEP § 802.01.

Further, a search of literature relating to a compound 8 to 50 nucleobases in length targeted to a nucleic acid molecule encoding phospholipid scramblase 3 would clearly reveal art relating to both of these Groups. Thus, the inclusion of both Groups in this application would not be overly burdensome to the Examiner. Accordingly, the instant Restriction Requirement meets neither of the criteria as set forth by MPEP §803 to be proper. Reconsideration and withdrawal of this Restriction Requirement is therefore respectfully requested.

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However, in an earnest effort to be completely responsive,
Applicant elects Group I, claims 1-2 and 4-14 and 19-20 with
traverse.

Respectfully submitted,



Jane Massey Licata
Registration No. 32,257

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Licata & Tyrrell P.C.
66 E. Main Street
Marlton, New Jersey 08053

(856) 810-1515